

Federal Railroad Administration, DOT

§ 209.203

(c) The degree of the respondent's culpability;

(d) The respondent's history of prior offenses;

(e) The respondent's ability to pay;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

§ 209.121 Appeal.

(a) Any party aggrieved by a presiding officer's decision or order issued under § 209.117 assessing a civil penalty may file an appeal with the Administrator. The appeal must be filed within twenty (20) days of service of the presiding officer's order.

(b) Prior to rendering a final determination on an appeal, the Administrator may remand the case for further proceedings before the hearing officer.

(c) In the case of an appeal by a respondent, if the Administrator affirms the assessment and the respondent does not pay the civil penalty within twenty (20) days after service of the Administrator's decision on appeal, the matter may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court.

CRIMINAL PENALTIES

§ 209.131 Criminal penalties generally.

A person who knowingly violates 49 U.S.C. 5104(b) or § 171.2(1) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

[71 FR 77295, Dec. 26, 2006]

§ 209.133 Referral for prosecution.

If an inspector, including a certified state inspector under part 212 of this chapter, or another employee of FRA becomes aware of a possible knowing

violation of 49 U.S.C. 5104(b) or a willful or reckless violation of the Federal hazardous materials transportation law or a regulation issued under those laws for which FRA exercises enforcement responsibility, he or she shall report it to the Chief Counsel. If evidence exists tending to establish a prima facie case, and if it appears that assessment of a civil penalty would not be an adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[61 FR 38647, July 25, 1996, as amended at 71 FR 77295, Dec. 26, 2006]

Subpart C—Compliance Orders

§ 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to the Federal railroad safety laws at 49 U.S.C. 5121(a) and/or 20111(b).

(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that a person is engaging in conduct or a pattern of conduct that involves one or more violations of the Federal railroad safety laws or any regulation or order issued under those laws for which FRA exercises enforcement authority.

[61 FR 38647, July 25, 1996]

§ 209.203 Notice of investigation.

(a) FRA begins a compliance order proceeding by serving a notice of investigation on the respondent.

(b) The notice of investigation contains:

(1) A statement of the legal authority for the proceeding;

(2) A statement of the factual allegations upon which the remedial action is being sought; and

(3) A statement of the remedial action being sought in the form of a proposed compliance order.

(c) The FRA may amend the notice of investigation at any time prior to the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond.